HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Appeal Nos.134 and 173 of 2006

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Writ Appeal No.134 of 2006

Between:

Medical Council of India … Appellant

And

Dr.Gopal Chevuru and others

… Respondents

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Counsel for the appellant: Sri P. Sriharsha Reddy

Counsel for respondent No.1: Sri Nooty Ramamohana Rao

Counsel for respondent No.2: Government Pleader for Medical, Health & Family Welfare

Counsel for respondent No.3: Sri D.V. Nagarjuna Babu

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Writ Appeal No.173 of 2006

Between:

NTR University of Health Sciences,

Vijayawada, represented by its

Registrar … Appellant

And

Dr.Gopal Chevuru and others

… Respondents

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Counsel for the appellant: Sri D.V. Nagarjuna Babu

Counsel for respondent No.1: Sri Nooty Ramamohana Rao

Counsel for respondent No.2: Government Pleader for Medical, Health & Family Welfare

Counsel for respondent No.3: Sri P. Sriharsha Reddy

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::JUDGMENT::

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April 13, 2006

Per G.S. Singhvi, CJ

These appeals are directed against order dated
14-12-2005 passed by the learned Single Judge whereby he allowed the writ petition filed by respondent No.1 Dr.Gopal Chevuru and directed NTR University of Health Sciences, Vijayawada (for short 'the University') to consider his case for admission in D.M. (Neurology) in Osmania Medical College in the academic year 2005-06 and also directed the Medical Council of India (for short 'the MCI') to regularize his admission.

For deciding whether the order under challenge suffers from legal infirmity and calls for interference, we may briefly notice the facts:

After doing M.D. in General Medicine from Nizam Institute of Medical Sciences (NIMS), Hyderabad, respondent No.1 appeared in the entrance examination conducted by the University on 29-5-2005 for admission to Super Specialty courses. As per the advertisement issued by the University, 34 seats, 8 of which were non-Statewide seats, were offered for admission in Super Specialities in Osmania Medical College, Hyderabad, Government Medical College, Hyderabad and Andhra Medical College, Visakhapatnam. Out of the two seats for DM (Neurology), one (State-wide) was in Osmania Medical College and the other (non-s tate-wide) was in Andhra Medical College, Visakhapatnam. Respondent No.1 gave option for admission in D.M. (Neurology) in Osmania Medical College. In the merit list prepared by the University, he was placed at No.2 among the candidates declared successful for admission in D.M. (Neurology). Dr.Chandrasekhar, who was placed at No.1 in the merit list, was admitted against the seat available in Osmania Medical College. However, on the last date fixed by the MCI for admission to Super Specialty courses i.e., 30-9-1995, Dr.Chandrasekhar vacated the seat because he got admission in NIMS, Hyderabad. Respondent No.1 could have applied for admission against that seat, but he could not do so because the Principal, Osmania Medical College did not notify the same. However, when he came to know that State-wide seat of D.M. (Neurology) has been vacated by Dr.Chandrasekhar, respondent No.1 immediately approached the Principal of the College for his admission. The latter refused to entertain his candidature apparently because the MCI had, vide Circular dated 28-1-2005, fixed 30-9-2005 as the cut-off date for admission to Super Speciality courses.

Having failed in his efforts to persuade the authorities concerned to entertain

his candidature for admission against the seat vacated by Dr.Chandrasekhar, respondent No.1 filed a petition under Article 226 of the Constitution of India, which was registered as Writ Petition No.23985 of 2005. He pleaded that delay, if any, in filling the vacant seat in D.M. (Neurology), which became available on 30-9-2005, could not be attributed to him and, therefore, the respondents should be directed to admit him to the course.

The learned Single Judge noted that there were only two seats in D.M. (Neurology), one of which was non-State-wide seat and was required to be filled from local area candidate of Andhra Medical College in terms of the Presidential Order issued under Article 371-D of the Constitution. The learned Single Judge then referred to the judgments of the Supreme Court in **Medical Council of India v. Madhu Singh**, **Mridul Dhar v. Union of India** and **Subodh Nautiyal (Dr.) v. State of U.P.** and held that the prohibition against the admission of candidates after cut-off date cannot be rationally applied to the courses in which only one seat is offered for admission. Accordingly, he allowed the writ petition and directed the University to admit respondent No.1 in D.M. (Neurology) in Osmania Medical College.

Sarvasri D.V. Nagarjuna Babu and P. Sriharsha Reddy, learned counsel for the appellants argued that the direction given by the learned Single Judge is liable to be set aside because the same is ex facie contrary to the law laid down by the Supreme Court and the guidelines framed by the MCI. Both Sri Babu and Sri Reddy emphasized that the mandate of the directions given by the Supreme Court against the admission of candidates after cut-off date could not have been diluted by the learned Single Judge on the pretext that there is only one seat in the Super Specialty course of D.M. (Neurology) which could be filled on State-wide basis. Sri Reddy submitted that the reasons assigned by the learned Single Judge for distinguishing the judgments of the Supreme Court in **Medical Council of India v. Madhu Singh** (supra) and **Mridul Dhar v. Union of India** (supra) are wholly irrelevant.

Sri Nooty Ramamohana Rao argued that the direction given by the learned Single Judge should not be disturbed by applying the ratio of the pronouncements relating to admission in MBBS and MD courses because there is no similarity in two sets of courses. He submitted that the State Government has to spend crores of rupees for creating facilities necessary for each Super Speciality and, if one out of the two seats in D.M. (Neurology) is to go waste, public interest would gravely suffer

inasmuch as the people will be deprived of the services of a specialized doctor. Sri Rammohana Rao further submitted that for ensuring fullest compliance of the direction given by the Supreme Court and guidelines framed by the MCI, this Court may direct that respondent No.1 shall be entitled to take examination of D.M. (Neurology) only after completion of three years course, even though this may result in his taking examination at the end of fourth year.

We have thoughtfully considered the entire matter. Before adverting to the arguments of the learned counsel for the appellants, it is worthwhile to notice the reasons assigned by the learned Single Judge for not following the ratio of the judgments of the Supreme Court in **Medical Council of India v. Madhu Singh** (supra) and **Mridul Dhar v. Union of India** (supra). Paragraphs 12, 13, 14, 16 and 17 of the order under challenge which contain those reasons read as under:

> "12.The courses in which number of students are admitted, and the courses in which there exists only one seat, differ from each other, not only on the mere numerical strength of seats, but also in the pattern of course. This is so particular in the context of commencement of courses. One of the fundamental reasons for the Supreme Court to insist on adhering to a schedule was that once the course commences, the nature of instructions on which the student admitted into that course must be uniform, both in content and extent. In a course, where there are number of seats, the academic session would commence from the notified date, even if all the seats are not filled up. However, where there exists only one seat in the course, the academic session can commence, depending on the availability of the lone student. The commencement or cessation of academic session in such courses would depend upon the presence or absence of that lone student. Therefore, notwithstanding the advisability and importance of stipulation of a date, within which the resultant vacancies must be filled in two types of courses referred to above, its consequences cannot be the same for the courses with many seats on the one hand and the course with solitary seat on the other.
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> 13. The matter assumes significance from the point of view of pragmatism also. For each seat of Super Speciality course, the expenditure incurred by the State is said to be in the order of crores. The object behind incurring such expenditure and providing highly sophisticated facilities is to ensure that the candidate, who has undergone this course, would be of immense help to the society. If, for one reason or the other, the selected candidate does not pursue the course and abandons it at the inception, the whole infrastructure would go waste. In the under-Graduate and Post-Graduate courses, the result of discontinuance of a course by a student and the effect of the seat going waste are not so drastic. In those cases, the courses as such would proceed, but

one seat may go waste. In the case of Super Speciality Course, the entire course stands discontinued, so far as that academic year is concerned. Such situations, naturally, were not either in the contemplation of the Supreme Court, or the Medical Council of India, when the time frame was stipulated.

14. Legal history is replete with examples, wherein the principal, as well as the subordinate legislations were enacted, keeping a set of circumstances in view, and with the passage of time, new situations have unfolded, warranting a purposive interpretation of such provisions. Instances are not lacking, wherein the provision as such is honoured and respected in its entirety, but as regard its application, the element of elasticity is ascribed, without compromising with the basic tenets. In the present context, given the statutory character of the time frame stipulated by the Supreme Court in **Mridul Dhar's** case (1 supra), it needs to be seen as to whether the stipulation of date for filling of the resultant vacancies, is so rigid, as not to be crossed under any circumstances.

…

16. Further, the pattern of instructions for Super Speciality courses is also substantially different from other courses. While it is instructions of regular nature for Post-Graduate and Under-Graduate Medical Courses, it is training in respect of Super Speciality Course. Conducting of examination is also not on par with the regular academic courses. The same is evident from Clause 12 of the Prospectus. It reads as under:

> "**12. Period of Training:**
>
> The period of training shall be of 3 years duration in the department concerned. A candidate admitted into DM/D.Ch. Course shall pass the examination within 3 years from the date of completion of course. If he / she fails to pass the examination within the period specified above, he / she shall not be permitted to appear for the examination thereafter and quality for the award of DM/M.Ch. Degree."

17. Another prominent reason for admission into a course at the earliest possible stage is to ensure that the students put in the minimum prescribed percentage of attendance, which is necessary for appearing in the examination. Clause 12 denotes that such a requirement does not exist, by and large, for Super Speciality courses. The stipend to be paid to a candidate is limited to 36 months. Under these circumstances, the denial of admission to the petitioner does not only result in personal loss to him, but also would bring about the discontinuation of the entire course of D.M. (Neurology) in the Osmania Medical College for the current academic year."

In **Medical Council of India v. Madhu Singh** (supra), the Supreme Court adversely

commented on the practice of mid-term admissions by observing that such admissions jeopardizes the scheme of the regulations framed by the Medical Council of India and gave the following directions:

> "(i) there is no scope for admitting students mid-stream as that would be against the very spirit of statutes governing medical education;
>
> (ii) even if seats are unfilled that cannot be a ground for making mid-session admissions;
>
> (iii) there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year;
>
> (iv) MCI shall ensure that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission;
>
> (v) different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, counselling and the like have to be completed within the specified time;
>
> (vi) no variation of the schedule so far as admissions are concerned shall be allowed;
>
> (vii) in case of any deviation by the institution concerned, action as prescribed shall be taken by MCI."

For implementing the aforementioned directives, the Central Government, after consulting the State Governments and Vice-Chancellors of the Universities of Health Sciences, issued guidelines prohibiting mid-term admissions. These guidelines were incorporated in the circular issued by the MCI.

The schedule fixed by the Medical Council of India pursuant to the directions given in **Madhu Singh**'s case (supra) came up for consideration in **Mridul Dhar v. Union of India** (supra). The Supreme Court reiterated the ratio of **Madhu Singh's** case and issued fresh directions for regulating admissions in the medical courses. The relevant extracts of the judgment in **Mridul Dhar's** case read as under:

> "Having regard to the professional courses, it deserves to be emphasised that all concerned including Governments, State and Central both, MCI/DCI, colleges — new or old, students, Boards, universities, examining authorities, etc. are required to strictly adhere to the time schedule wherever provided for; there should not be midstream admissions; admissions should not be in excess of sanctioned intake capacity or in

excess of quota of anyone, whether State or management. The carrying forward of any unfilled seats of one academic year to next academic year is also not permissible.

…

Having regard to the aforesaid, we issue the following directions:

1. All participating States and Union Territories' Boards of Secondary Education shall declare 10+2 result by 10th June of every year and make available the marksheets to the students by 15th June.

The aforesaid condition would not apply to West Bengal for the year 2005. As already noticed, West Bengal would make available to the students concerned the marksheets by 15-6-2005.

Heads of Boards would be personally liable to ensure compliance.

2. The timetable mentioned in notification dated 25-2-2004 shall be strictly adhered to by all concerned including States and Union Territories and results of State medical/dental entrance examination shall be declared before 15th of June.

3. The States/Union Territories shall complete the admission process of first round of State-level medical/dental college admission by 25th July i.e. a week before start of second round counselling or allotment of seats under all-India quota. The correct vacancy position shall be intimated by the Chief Secretary of the State/Union Territory to the DGHS by 26th July. It shall be verified by the Head of the institution/or Head of the medical institution/Health Department of the State.

4. It shall be the responsibility of all concerned including Chief Secretaries of each State/Union Territory and/or Health Secretaries to ensure compliance with the directions of this Court and requisite time schedule as laid down in the Regulations and non-compliance would make them liable for requisite penal consequences.

5. All seats in all-India quota must be fully disclosed giving details of the date of recognition/renewal to DGHS before a date to be notified by DGHS and the same shall be duly published.

6. By 31st October, the States, through the Chief Secretaries/Health Secretaries shall file a report in regard to admissions, with the DGHS giving details about the adherence to a time schedule and admission granted as per the prescribed quota. The recalcitrant States, particularly officers personally will have to face the consequences for violation.

7. The DGHS shall file by 31-1-2005 report in regard to feasibility of conducting counselling through the process of video-conferencing.

8. The DGHS shall file report within three months on the aspect of Section

10-A seats being subjected to 15 per cent all-India quota and about the increase of the quota from 15 per cent to 20 per cent.

9. The DGHS shall also file a report within three months on the aspect of constitution of High-Powered Committee/ombudsman.

10. The seats allotted up to 15th July, shall also be subjected to the respective State quotas.

11. If any private medical college in a given academic year for any reason grants admission in its management quota in excess of its prescribed quota, the management quota for the next academic year shall stand reduced so as to set off the effect of excess admission in the management quota in the previous academic year.

12. The time schedule for grant of admission to postgraduate courses shall also be adhered to.

13. For granting admission, the merit determined by competitive examination shall not be tinkered with by making a provision like grant of marks by mode of interview or any other mode.

14. Time schedule for establishment of new college or to increase intake in existing college, shall be adhered to strictly by all concerned.

15. Time schedule provided in the Regulations shall be strictly adhered to by all concerned failing which the defaulting party would be liable to be personally proceeded with.

16. Copy of the judgment shall be sent to the Chief Secretaries of all the States/Union Territories for compliance."

The matter was once again considered in **Medical Council of India v. Naina Verma** {C.A.No.451 of 2004 decided on 13-1-2005} wherein the Supreme Court reversed the direction given by Himachal Pradesh High Court for mid-term admission of the respondent and held that she can be admitted only in the next academic session i.e., 2005-06. The relevant portions of that order are also reproduced below:

"… We are of the view that this is not a matter which calls for any compromise. The respondent must complete the MBBS course with effect from the day one. There is no shortcutting the process of education by means of litigation or otherwise. We are supported in the view that we have taken by the decision of this Court in **Muskan Dogra and Ors. V. State of Punjab and ors.** {pronounced on 14-12-2004 in SLP (C) No.21219/2004}. In that case, the writ petitioner had been admitted in the BDS Course whereas according to his ranking he should have been permitted to join MBBS Course. By the time the writ petition was disposed of and the matter came up to this Court, the writ

petitioner had been studying for one and half year in the Dental Course. This Court while upholding the petitioner's claim to be admitted in the MBBS course made it clear that he have to forego one and half years spent in the Dental Course and start the MBBS Course from day one.

The situations brought about by the various orders of the High Court would not have occurred, had the High Court in compliance with the directives of this Court, also ensured that the Medical Council was made a party before passing any such order relating to admissions in the Medical Courses.

In the circumstances of the case, we dispose of the appeal by allowing the respondent No.1 to be admitted in the MBBS Course for the academic session 2005-06 within the permissible capacity of the Rajinder Prasad College, Tanda …"

After considering the various pronouncements of the Supreme Court and earlier guidelines, the MCI issued Circular dated 28-1-2005 and laid-down the time schedule for admissions and commencement of Post-Graduate as well as Super Specialty Courses for the academic year 2005-06. These are:

Commencement of Post-graduate medicine courses	02-05-2005
Last date of admission to Post-graduate medicine courses	31-05-2005
Commencement of Super-speciality medicine courses:	01-08-2005
Last date of admission to Super-speciality medicine courses:	30-09-2005

On a wholesome reading of the directives given by the Supreme Court, which are undoubtedly binding on all Courts, executive authorities and the MCI, as also the guidelines and time schedule fixed by the MCI, we are tempted to think that the learned Single Judge committed an error by directing admission of respondent No.1 in D.M. (Neurology) in Osmania Medical College, Hyderabad after 30-9-2005, but, on a deeper consideration of the factors enumerated in the order under challenge, we have not felt persuaded to disturb the same.

At the cost of repetition, we deem it proper to observe that there are only two seats of D.M. (Neurology) in the entire State of Andhra Pradesh, one of which is non-State-wide seat and is required to be filled from the local area candidate of Andhra

University. Thus, only one seat is available for all the candidates of the State of Andhra Pradesh, except those belonging to the local area of Andhra University. It is also a fact that after taking admission against the State-wide seat, Dr.Chandrasekhar vacated the same on 30-9-2005. It was the duty of the Principal, Osmania Medical College to immediately inform respondent No.1 about the availability of the seat and ascertain his willingness to join the course. If that had been done, respondent No.1 may not have been compelled to litigate and suffer the trauma of being deprived of his legitimate right to be admitted in the Super Speciality course. However, the fact of the matter is that the Principal of Osmania Medical College did not act with enough diligence and, but for the intervention of the Court, the seat in the Super Speciality Course, for which the State Government is to spend lakhs of rupees, if not crores, would have gone abegging.

In the above backdrop, we are not inclined to disturb the direction given by the learned Single Judge for admission of respondent No.1, but would like to add a rider that he shall be entitled to take the examination only after completing three years course. This would be in tune with the spirit of order dated 13-1-2005 passed by the Honourable Supreme Court in **Naina Verma's** case (supra).

In the result, the appeals are dismissed. However, it is directed that respondent No.1 shall be allowed to take examination of D.M. (Neurology) only after completing three years course.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

April 13, 2006

svs